

COURTNEY E. MURPHY

From: Abrams, Michael [MAbrams@LathropGage.com]
Sent: Monday, September 24, 2007 9:57 AM
To: COURTNEY E. MURPHY
Subject: RE: Maxus v RSUI
Attachments: Abrams, Michael.vcf

We can not consent.

Michael J. Abrams
LATHROP & GAGE L.C.
2345 Grand Boulevard, Suite 2500
Kansas City, MO 64108
(816) 460-5530 Direct Dial
(816) 292-2001 Facsimile
mabrams@lathropgage.com

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-----Original Message-----

From: COURTNEY E. MURPHY [mailto:CMURPHY@clausen.com]
Sent: Friday, September 21, 2007 12:37 PM
To: Abrams, Michael
Cc: Beck, Douglas (SHB); DAVID A. GROUP
Subject: Maxus v RSUI
Importance: High

Dear Mike,

Pursuant to our discussion earlier this week, this will serve as a follow up on our good faith request to permit RSUI to designate Brian Jarvinen as an expert meteorologist in these proceedings. We attach his report which will be used and he is available for immediate deposition. You advised that you would take our request under advisement, but were inclined to deny our request to designate. As I mentioned, it may be prudent to proceed with the depositions under a full reservation of rights. Alternatively, we will file our motion.

I also advised you that the basis of our motion was the fact that RSUI relied upon the claim submission issued to us on May 31, 2006. Relying on Maxus' claim submission, RSUI believed that discrepancies in scope was the issue rather than the wind vs flood because Maxus did not include the first floor of the properties in their claim "arguably" due to flooding - as Stacey Andreas of your firm put it and as Chadwell captured it in his letter report. Based upon the claim Maxus submitted, in dispute was the discrepancies in scope calculated by our respective adjustment teams. It was only during McRobert's deposition did we learn that while Chadwell was in fact directed by Maxus to not include the first floor damages arguably due to flooding, that McRoberts now contends that this was in error, that it should never have been done that way and that there was considerable "wind" damage to the first floor of the property. While we also recognize that McRoberts now contends the approach taken was a negotiation tactic of sorts, that testimony was a little incredible in that the direction given to Chadwell was given in October/November 2005 and Maxus never presented their claim to RSUI until May, 2006. As such, we learned on July 31, 2007 - post expert designation deadline - that the insured now contends that they did sustain wind damage to the first floors, that their own claim preparation was incorrectly performed and that the claim as submitted (which was never amended or modified) was also erroneous.

For these reasons, we will be requesting the Court to permit our expert designation.

If we do not hear back from you today, we will presume that you do not consent and we will be filing the motion.

Please call me if you have any questions,

Courtney

Courtney Murphy

Clausen Miller P.C.

One Chase Manhattan Plaza
39th Floor
New York, New York 10005
Phone: 212/805-3908
Fax: 212/805-3939
Mobile: 917/589-9436
cmurphy@clausen.com

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